

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB

Mailed:
Oct. 3, 2003

Paper No. 12
Bottorff

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Consulting Services International Inc.

Serial No. 76376622

Richard A. Zachar of Vedder, Price, Kaufman & Kammholz for
Consulting Services International Inc.

Marlene Bell, Trademark Examining Attorney, Law Office 105
(Thomas G. Howell, Managing Attorney).

Before Hairston, Walters and Bottorff, Administrative
Trademark Judges.

Opinion by Bottorff, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register
of the mark CRMS (in typed form) for services recited in
the application, as amended, as "providing an on-line

database in the field of ocean shipping contract carrier rates to subscribers," in Class 39.¹

Applicant has appealed the Trademark Examining Attorney's final refusal to register applicant's mark. The refusal was made under Trademark Act Section 2(d), 15 U.S.C. §1052(d), on the ground that applicant's mark, as applied to applicant's services, so resembles the mark CRMS, previously registered for "software, namely, software for locating, controlling and scheduling the use of electronic resources that are used to receive and transmit information and data, the information and data including video signals, audio signals and human and machine-readable data," in Class 9,² as to be likely to cause confusion, to cause mistake, or to deceive.

The appeal has been fully briefed, but applicant did not request an oral hearing. We reverse the refusal to register.

¹ Serial No. 76376622, filed February 27, 2002. The application is based on use in commerce under Trademark Act Section 1(a), 15 U.S.C. §1051(a), and January 15, 2002 is alleged in the application as the date of first use of the mark anywhere and the date of first use of the mark in commerce. In response to the Trademark Examining Attorney's inquiry, applicant asserted that CRMS has no known significance in the relevant trade or industry or as applied to the services. It appears from applicant's specimen that applicant uses CRMS as an acronym for "contract rate management system."

² Registration No. 2,392,299, issued October 3, 2000.

Our likelihood of confusion determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the likelihood of confusion factors set forth in *In re E.I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

We find, first, that applicant's mark and the cited registered mark are identical in terms of appearance, sound, connotation and overall commercial impression. This fact weighs in favor of a finding of likelihood of confusion.

We turn next to the issue of the similarity or dissimilarity of applicant's and registrant's respective goods and services, trade channels, and classes of purchasers. It is not necessary that the respective goods or services be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is sufficient that the goods or services are related in

some manner, or that the circumstances surrounding their marketing are such, that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks used thereon, to a mistaken belief that they originate from or are in some way associated with the same source or that there is an association or connection between the sources of the respective goods or services. See *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991); *In re International Telephone & Telegraph Corp.*, 197 USPQ2d 910 (TTAB 1978). Moreover, the greater the degree of similarity between the applicant's mark and the cited registered mark, the lesser the degree of similarity between the applicant's goods or services and the registrant's goods or services that is required to support a finding of likelihood of confusion; where the applicant's mark is identical to the registrant's mark, as it is in this case, there need be only a viable relationship between the respective goods or services in order to find that a likelihood of confusion exists. See *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687 (Fed. Cir. 1993); *In re Concordia International Forwarding Corp.*, 222 USPQ 355 (TTAB 1983).

Applying these principles to the present case, we find that the Trademark Examining Attorney has failed to establish that applicant's services and registrant's goods are similar or related in any way which would result in source confusion, even if they are marketed under their identical CRMS marks. Indeed, the Trademark Examining Attorney has submitted no evidence at all on this issue, but merely asserts in a conclusory manner that "[c]onsumers in a wide variety of fields, including Applicant's defined field and industry, often use software to locate, control and schedule the use of electronic resources that are used to receive and transmit information and data, and, as such, are likely to encounter the Registrant's mark for said goods." (Brief, p. 5.) There is no evidence to support this assertion.

In particular, there is no evidence that purchasers or users of applicant's "on-line database in the field of ocean shipping contract carrier rates" would also be purchasers or users of registrant's software, which is used to "locate, control and schedule the use of electronic resources that are used to receive and transmit information and data." The respective goods and services, as identified, do not appear to be identical, competitive, or complementary, and there simply is no evidence in the

record on which we might base a finding that the goods and services are otherwise related in any way. The respective goods and services, as identified, each appear to have fairly particular, specialized applications and functions, and the "ocean shipping contract carrier rates" to which applicant's database pertains would appear to have nothing to do with software which is used to locate, control and schedule "electronic resources that are used to receive and transmit information and data."³ There is no evidence that they are marketed in the same trade channels or to the same classes of purchasers, and there is no basis in the record for concluding that they would ever be encountered by the same purchasers in circumstances which might give rise to a likelihood of confusion.

The Trademark Examining Attorney bears the burden of presenting evidence to support the refusal. Where (as in this case) the respective goods and services, on their face, do not appear to be similar or related, it is incumbent on the Trademark Examining Attorney to present

³ We base this statement not on the evidence applicant has submitted from registrant's website and specimen, which show that registrant's goods are used in the education field in connection with audio-visual and other classroom electronic equipment. Registrant's identification of goods is not limited to any particular field. Nonetheless, it appears from the language of the identification of goods itself that registrant's goods have a specialized function and application which, on this record, have no apparent relationship to applicant's services.

evidence establishing such similarity or relationship. Mere argument and conclusory assertions do not suffice.

In summary, we find that there is no likelihood of confusion here. On this record, applicant's services and registrant's goods, as well as the trade channels and classes of purchasers for those respective services and goods, appear to be too dissimilar and unrelated for any confusion to be likely, even if they are marketed under the same mark. We might reach a different conclusion on a different, more complete evidentiary record, but on this record, we cannot find that confusion is likely.

Decision: The refusal to register is reversed.